

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NOS. E-21569 E-21648
--	--------------------------------

**ORDER ESTABLISHING PROCEDURAL SCHEDULE, PROPOSING TO TAKE
OFFICIAL NOTICE, AND NOTICE OF HEARING**

(Issued April 21, 2004)

On May 30, 2002, and July 31, 2003, MidAmerican Energy Company (MidAmerican) filed petitions with the Utilities Board (Board) requesting franchises to erect, maintain, and operate two segments of nominal 161 kilovolt (kV) (169 kV maximum) electric transmission line proposed to be constructed in Polk County, Iowa. One segment, identified as Docket No. E-21569, would run from the existing Sycamore Substation in Johnston, Iowa, to the existing Ankeny substation in Ankeny, Iowa. The other segment, identified as Docket No. E-21648, would run from the existing Ankeny substation to the existing Northeast Ankeny substation. The first segment would be approximately 4.65 miles long, and the second would be approximately 5.05 miles long. A related third segment of the project, running from the Northeast Ankeny substation to connect to an existing 161 kV electric transmission line owned by Alliant Energy Corporation, was granted a franchise by the Board on July 22, 2003, and construction was completed by October 9, 2003.

The petitions request that MidAmerican be vested with the power of eminent domain pursuant to Iowa Code § 478.6 (2003). Since the initial filings, MidAmerican

filed several amendments to the original petitions. As of the date of this order, there is one request for eminent domain in Docket No. E-21569 and six requests in Docket No. E-21648. Nine objections to the petitions have been filed with the Board as of the date of this order.

Iowa Code § 478.6 requires a hearing to be held in an electric transmission line franchise proceeding if objections to a franchise petition are filed or if eminent domain is requested. The same code section and Board rules at 199 IAC 11.5(3) require the Board to prescribe the form of the notice to be served on owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. MidAmerican filed its proposed eminent domain notice for Board approval on April 1, 2004.

On April 13, 2004, the Board issued an order consolidating Docket Nos. E-21569 and E-21648, assigning them to a presiding officer to establish a procedural schedule and perform other necessary functions, and ordering that the presiding officer determine whether to approve the proposed eminent domain notice. The Board found that the hearing should be held in Des Moines, Iowa, pursuant to Iowa Code § 478.6.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has the authority to grant franchises to construct, erect, maintain, and operate transmission lines capable of operating at an electric voltage of 69 kV or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current. Iowa Code § 478.1. The Board

may grant franchises in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to line location and route, as may seem to it just and proper. Iowa Code § 478.4. To obtain a franchise, the petitioner must show that the proposed line or lines are necessary to serve a public use and represent a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4.

The Board also has the authority to vest the holder of a franchise with the right of eminent domain to the extent the Board may approve, prescribe, and find necessary for public use, not exceeding one hundred feet in width for right-of-way. Iowa Code §§ 478.6, 478.15. The burden of proving the necessity for public use is on the company seeking the franchise. Iowa Code § 478.15.

THE ISSUES

MidAmerican's petitions in Docket Nos. E-21569 and E-21648, Exhibit D, contain identical statements regarding the purpose of the proposed lines, except that each Exhibit D refers to the proposed line segment in the other docket. MidAmerican states that: "The Ankeny area is currently served by two MidAmerican 69 kV lines from the Sycamore Substation, located to the southwest of Ankeny, and by a 69 kV line from Ames Municipal Utilities, located to the north of Ankeny. Loss of any of these 69 kV line sections can result in unacceptably high current flows on nearby 69 kV lines during peak or off-peak load periods." MidAmerican further states that the construction of the two proposed line segments, in combination with the third segment already built, "will create a 161 kV loop which will provide additional

capacity to maintain line flows at acceptable levels and increase reliability in the area."

MidAmerican must demonstrate that the proposed transmission line segments are necessary to serve a public use. Iowa Code § 478.4. It must also show the proposed lines represent a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4. MidAmerican must demonstrate that the transmission line is proposed to be constructed near and parallel to roads, to railroad rights of way, or along division lines of land, wherever practical and reasonable, and so as not to interfere with the public use of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant. Iowa Code § 478.18. MidAmerican must also show that the proposed lines conform to the construction and safety requirements of Iowa Code §§ 478.19 and 478.20 and applicable Board rules at 199 IAC 11 and 25. In addition, the undersigned will determine whether any terms, conditions, and restrictions on the franchise, if granted, should be imposed. Iowa Code § 478.4.

Before MidAmerican can be vested with the power of eminent domain, it must demonstrate that the taking of private property described in its petition is necessary for public use. Iowa Code §§ 478.6, 478.15. If the requested franchise is granted, MidAmerican is entitled to be vested with the power of eminent domain only if and to the extent as the Board may approve, prescribe, and find necessary for public use. Iowa Code §§ 478.6, 478.15.

Any person whose rights may be affected by the proposed transmission line may file an objection with the Board. Iowa Code § 478.5. Objections must be filed in writing with the Board no later than twenty days after the date of last publication of the notice required by Iowa Code § 478.5. Nine persons have filed objections as of the date of this order. In general, the objectors were opposed to placement of a certain portion of the line near the Carney Marsh for a variety of reasons, including potential harm to birds and wildlife. One objector recommended options to reduce the probability of bird collisions; one referred to the unfairness of property damage (loss of value and unsightliness), and several objectors suggested alternate routes. The issues raised in these objections, and any issues that may be raised in objections filed in the future, are also issues in the case.

One of the issues related to the objectors' concern regarding placement of a portion of the proposed line near the Carney Marsh is the authority of the Board over that portion of the line. The Board has jurisdiction over the location and routing of proposed electric transmission lines outside of cities. Iowa Code § 478.1(1). It appears that the route of the proposed line near the Carney Marsh may be inside the city limits of Ankeny. If this is true, it is unclear whether the Board would be able to require MidAmerican to move the route of the portion of the line that is inside the city limits of Ankeny. However, the portion of the line inside the Ankeny city limits is clearly related to and part of the line over which the Board does have jurisdiction with respect to location and routing. Therefore, MidAmerican must address the issues raised by the objectors because they remain as issues in the case.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present evidence and argument on all issues involved in this proceeding, and to respond to evidence presented by opposing parties. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the undersigned administrative law judge will issue in this case must be based solely on evidence contained in the record and on matters officially noticed in the record. Iowa Code §§ 17A.12(6) and (8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 478.4. This procedure also tends to diminish the length of the hearing and spares the parties the expense and inconvenience of additional hearings.

MidAmerican must file prepared direct testimony and exhibits prior to the hearing in conformance with the procedural schedule set forth below. At a minimum, MidAmerican's prepared testimony must address the issues listed above and the issues identified in the attached report by Mr. Don Stursma dated April 5, 2004. MidAmerican must also address the issues identified in the written objections that have been filed in this docket, state what could be done to address the concerns, discuss the consequences of any actions that might be taken in response to the concerns, and state what it would be able and willing to do to address the concerns. MidAmerican must discuss various routes it considered and explain why it is proposing the route that would run the line near the Carney Marsh. In addition, MidAmerican's prepared direct testimony must respond to issues raised in all written objections that are received by MidAmerican at least seven (7) days before the deadline for filing MidAmerican's prepared testimony. New written objections filed with the Board and received by MidAmerican less than seven (7) days before the deadline for filing MidAmerican's prepared direct testimony, or received by MidAmerican after it files its prepared direct testimony and at least seven (7) days prior to the deadline for filing MidAmerican's prepared rebuttal testimony, must be addressed in MidAmerican's prepared rebuttal testimony.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule in this order.

Parties other than MidAmerican who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below. Similarly, if the Consumer Advocate takes the position that MidAmerican should not be granted the franchise, or that restrictions on the grant should be imposed, it must file prepared testimony or a brief in support of its position according to the procedural schedule.

PARTIES AND OBJECTORS

MidAmerican and the Consumer Advocate are parties to this proceeding.
Iowa Code §§ 17A.2(8) and 475A.2.

As of the date of this order, nine objections to the petitions have been filed with the Board. The Board has received objections from the following individuals: Mr. Jayson Alcorn, Ms. Betty Baker, Mr. Mike Bockert, Ms. Ann Coe, Ms. Johanna Hudson, Ms. Linda M. Kephart, Mr. Richard Miller, Mr. Gary Nelson, and Ms. Julie Quick-Alcorn.

Each of these nine objectors, and anyone else who files an objection pursuant to this order and Iowa Code §§ 478.5, is presumed to be a party to this case.

However, no objector is entitled to party status merely because that person has written a letter. To qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the franchise. Iowa Code §§ 478.5, 17A.2(5) and (8). An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the franchise will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence at the hearing that will explain the nature of their specific rights or interests they believe should be protected, and that shows how their rights or interests will be affected by the transmission line. As discussed above, to the extent that this evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be written down and filed as prepared testimony according to the procedural schedule established below.

If the owners or persons in possession of any of the parcels over which MidAmerican is requesting the right of eminent domain choose to file an objection, they will be considered parties to the case without any further showing.

Objections must be made in writing and filed with the Executive Secretary of the Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. If a person files an objection after some or all of the prepared testimony and exhibits have already been

filed, that person will not receive copies of the previously filed documents. If a person files an objection after some or all of the prepared testimony and exhibits have already been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials.

The official file of this case will be available for inspection at the Utilities Board Records and Information Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1). Copies may be obtained, and there will be a charge to cover the cost of copying.

If it has not already done so, MidAmerican must serve a copy of the most current petitions in Docket Nos. E-21569 and E-21648 on each of the nine objectors who filed an objection prior to the date MidAmerican filed its original petitions.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) must be sent to the Executive Secretary. A party (including objectors) must file an original and six¹ copies of each communication with the Executive Secretary, and the party must send one copy to each of the other parties to this case, except three copies must be served on the Consumer Advocate. 199 IAC 1.8. Along with the communication being sent, the party must file with the

¹ Ordinarily, the Board requires that an original and three copies be filed in E-Dockets. 199 IAC 1.8(4)"d." However, the rule provides that additional copies may be requested, and additional copies are needed in this case.

Board a certificate of service that conforms to 199 IAC 2.2(16), that verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine Iowa Code Chapter 478, 199 IAC 11 and 25, and 199 IAC 1.8 for other substantive and procedural rules that apply to this case. There are links to the Iowa Code and the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Don Stursma, manager of the Safety & Engineering Section, has prepared a memo dated April 5, 2004, concerning MidAmerican's petitions pursuant to Iowa Code § 479.11. A copy of the memo is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the memo and of the facts contained therein, thus making them a part of

the record of this case. Iowa Code §§ 17A.12(6)(c), 17A.14(4). Any party objecting to the taking of official notice of the memo must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the memo in prefiled testimony and at the hearing, and they may also cross-examine Mr. Stursma concerning the contents of his report at the hearing.

EMINENT DOMAIN

MidAmerican has requested the right of eminent domain for the parcels listed in Exhibit E of each petition. MidAmerican must keep Exhibit E for each petition current. On April 1, 2004, MidAmerican filed a proposed eminent domain notice for each docket to be served on the owners of record and parties in possession of the parcels of land over which the right of eminent domain is sought. The proposed notices are essentially identical. The following changes must be made to the notices before they will be approved.

1. The first paragraph must include a statement that the proposed line is for a 161 kV electric transmission line.
2. The following phrase should be added to the beginning of the first sentence of paragraph "b": "Since MidAmerican has not secured a voluntary easement from you." The final sentence of paragraph "b" should be amended to read: "The scope of the eminent domain rights being requested regarding your property is explained in Attachment B."

3. The first paragraph in paragraph "c" must be amended to read as follows: "The Board has scheduled a public hearing to consider the petition, the filed objections, the request(s) for eminent domain, and to hear testimony to aid it in determining whether to grant the franchise and the right of eminent domain. The Board may grant a franchise in whole or in part upon the terms, conditions and restrictions, and with the modifications as to location and route, as may seem to it just and proper. Before it may grant a franchise, the Board must make a finding that the proposed line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. If the right of eminent domain is granted by the Board it is granted for the life of the proposed electric line. The franchise granted by the Board is for a 25-year period, which is subject to renewal for as long as the electric line is in use."

4. The first paragraph of paragraph "d" must be amended as follows. The sentence regarding objections must be moved to a separate paragraph and the following sentences placed at the beginning of the new paragraph: "You have the right to file a written objection to the request for a franchise and the request for the right of eminent domain. Objections should include the docket number listed at the beginning of this letter and should state the objector's interest in the proposed electric line and the reasons the objector is opposed to granting the franchise or right of eminent domain."

5. The references to the Iowa Code in Attachment C should be updated to current Iowa Code sections.

MidAmerican must file a revised eminent domain notice for approval within seven days of the issuance of this order.

IT IS THEREFORE ORDERED:

1. If it has not already done so, MidAmerican must serve a copy of the most current petitions in Docket Nos. E-21569 and E-21648 on each of the nine objectors who filed objections prior to the date MidAmerican filed its original petitions.
2. Each person who files a letter of objection to MidAmerican's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the grant or denial of the franchise.
3. Objections must be made in writing and filed with the Executive Secretary of the Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069. Objections must be filed no later than 20 days after the date of last publication of notice unless good cause is shown for the late filing. Objectors must file an original and six copies of all subsequent communications to the Board with the Executive Secretary, and must send a copy of each communication to the other parties in the case, except three copies must be served on the Consumer Advocate. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), that verifies a copy of the document was served on the other parties.
4. The following procedural schedule is established:

a. On or before May 12, 2004, MidAmerican must file prepared direct testimony and exhibits relating to its petitions for franchise as discussed above. In its prepared testimony, MidAmerican must address the issues discussed in the body of this order. If it files exhibits, MidAmerican should use exhibit numbers one and following. MidAmerican should file a prehearing brief on the same date that addresses, at a minimum, the extent of the Board's authority regarding the portion of the line within the city limits of Ankeny, and the effect, if any, of Senate File 2118 on the petition for franchise.

b. On or before June 2, 2004, the Consumer Advocate and any objector may file prepared responsive testimony. If the Consumer Advocate takes the position that MidAmerican should not be granted the franchise, or that restrictions on the grant should be imposed, it must file prepared testimony or a brief in support of its position on or before June 2, 2004. If it files exhibits, the Consumer Advocate should use exhibit numbers one hundred and following. If any objector files exhibits, the objector should use exhibit numbers starting with the person's initials and numbers 200 and following, such as "Exhibit AC-200" etc.

c. On or before June 16, 2004, MidAmerican may file prepared rebuttal testimony and exhibits.

d. If any party wishes to file a brief responding to those previously filed or supplementing its previously filed position, it must do so on or before June 28, 2004.

e. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 9:30 a.m. on Thursday, July 8, 2004, in the Board Hearing Room, 350 Maple Street, Des Moines, Iowa. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Utilities Board at (515) 281-5256 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

e. Required number of copies. All parties must file an original and six copies of all documents filed with the Board. 199 IAC 1.8(4)"d."

5. The administrative law judge proposes to take official notice of Mr. Stursma's memo dated April 5, 2004, attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of the memo should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing.

6. Pursuant to Iowa Code § 478.6, a copy of this order will be served by ordinary mail upon MidAmerican, the Consumer Advocate, the nine objectors who have filed written objections, and the persons listed in Exhibit E of each franchise

petition (the owners of record and parties in possession of the parcels over which MidAmerican requests the right of eminent domain).

7. MidAmerican must keep Exhibit E current. MidAmerican must file a revised eminent domain notice as discussed in the body of this order for Board approval within seven days of the date of issuance of this order.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 21st day of April, 2004.

IOWA UTILITIES BOARD
Safety & Engineering Section

Docket No.: E-21569 and E-21648
Utility: MidAmerican Energy Co.
Date: April 5, 2004

TO: The Docket Files

FROM: Don Stursma

SUBJECT: MidAmerican Energy 161 kV Projects near Ankeny

I. Background

On January 8, 2002, in compliance with Iowa Code § 478.2, MidAmerican Energy Co. (MidAmerican) held an informational meeting in Ankeny, Iowa, concerning approximately 12¹ miles of 161,000 volt electric transmission line proposed for construction in Polk County, Iowa. The proposed project was comprised of the following contiguous segments: 1) (Southern) from the existing Sycamore Substation in the city of Johnston generally east then north to the existing Ankeny Substation within the corporate limits of Ankeny; 2) (Central) generally east and north from the Ankeny Substation to a proposed new Northeast Ankeny Substation; 3) (Northeastern) north from the Northeast Ankeny Substation to connect to an existing Alliant Energy 161 kV electric transmission line.

Following the informational meeting, nine objections to the project were filed with the Utilities Board (Board). All opposed the line's proximity to the Carney Marsh in southeast Ankeny, including contending the lines would endanger migratory waterfowl. The marsh is adjacent to the Sycamore-to-Ankeny (Southern) segment described above.²

MidAmerican subsequently decided to file individual franchise petitions for each of the three project segments. On May 30, 2002, MidAmerican filed a petition for electric franchise, including the right of eminent domain (ED) for three properties, for the Southern segment (5.15 miles). It was assigned Docket No. E-21569 – the number originally assigned to the entire project. On August 22, 2002, MidAmerican filed a petition for electric franchise, identified as Docket No. E-21594, for the Northeastern segment (1.22 linear miles, double circuited). Eminent domain was not sought for that segment.

Because of the objections on file and the ED requests, Iowa Code § 478.6 requires a hearing be held in Docket No. E-21569. By letter dated November 26, 2002, Board staff

¹ This was the mileage subject to IUB jurisdiction. Several additional miles would be within the corporate limits of Ankeny, where the IUB does not have jurisdiction. IOWA CODE § 478.1.

² The Carney Marsh and the proposed route near it are both within the corporate limits of Ankeny.

advised MidAmerican that the petitions in all three dockets (including the one not yet filed) should be consolidated for hearing. Staff felt it could not be presumed that the objections filed following the Informational Meeting were applicable only to one docket when the project was presented as a single unit at that meeting. Also, it appeared the “public use” and “reasonable relationship” tests of Iowa Code § 478.4, as well as the routing of any one segment, might be influenced by other segments.³

On March 11, 2003, MidAmerican filed a “Request for Issuance of Electric Franchise” in Docket No. E-21594, the Northeastern segment. MidAmerican contended that each of the three segments, although related, were physically and functionally different, with separate timetables proposed for the construction of those segments verifying that they were not dependent upon each other. MidAmerican stated that the Northeastern segment was needed because its 69,000 volt system in the Ankeny area would be loaded to nearly 100% at the 2003 normal summer weather, and MidAmerican needed to serve the distribution load from its new NE Ankeny Substation prior to the summer of 2003. MidAmerican further argued that the objections filed related solely to the Southern segment and were not relevant or applicable to the Northeastern segment. MidAmerican stated it had all necessary easements for the Northeastern line and requested issuance of a franchise in Docket No. E-21594.

On March 18, 2003, the Office of Consumer Advocate (OCA) filed a “Statement of Non-Opposition” to the request for separate consideration and the grant of franchise for the “Northeastern Line.” No other comments were received.

It appeared that the Northeastern segment, by feeding a new substation in northeast Ankeny, would alleviate the near-overload of existing electric lines serving that area and would serve a public use on its own merits, exclusive of additional benefits that would derive from future incorporation into a 161,000 volt loop around Ankeny. It also appeared that construction of that line was of some urgency. Further, this segment was over four miles from the Carney Marsh at its closest point, including areas within the corporate limits of Ankeny, so it appeared unlikely that a franchise action taken regarding the Northeastern segment would affect the marsh area.

A franchise, the remedy MidAmerican sought, could not be issued without further proceedings. On April 23, 2003, the Board issued an order granting separate consideration of the Northeast segment, conditioned upon provision of notice to the nine objecting parties. After proper publication of notice, and with no objections filed, the Board granted a franchise in Docket No. E-21594 on July 22, 2003. Construction of that Northeastern segment was completed by October 9, 2003.

On July 31, 2003, MidAmerican filed a petition, assigned to Docket No. E-21648, for electric franchise for the Central segment (5.05 miles) that would connect the Ankeny

³ Gannon vs. Iowa State Commerce Commission, Polk County District Court, Case No. 92922 (1970).

substation and the new Northeastern Ankeny substation, including the right of eminent domain on six parcels.

On December 22, 2003, and January 7, 2004, MidAmerican filed amendments to its petition in Docket No. E-21648, correcting deficiencies identified by Board staff.

On September 3, 2002, and February 5, 2004, MidAmerican filed amendments to its petition in Docket No. E-21569, correcting deficiencies identified by Board staff. The February 5, 2004, filing also changed the line length from 5.15 to 4.65 miles, reflecting a recent annexation by the City of Ankeny which placed more of the route inside of corporate limits; and reduced the number of eminent domain parcels from three to one, reflecting MidAmerican's success in obtaining two voluntary easements.

Under Iowa Code 478.6 and 199 IAC 11.5(3), owners of record and parties in possession of property over which the right of eminent domain is sought must be served notice, using a form of notice prescribed by the Board. These letters are drafted by the petitioner and approved for use by the Board. On April 1, 2004, MidAmerican filed copies of the notice letters proposed for use in these dockets.

As will be more fully discussed in a later section of this report, staff has reservations about the nature of the rights MidAmerican is seeking to obtain through eminent domain, as stated in Exhibit E, in Docket No. E-21648. Staff will also identify areas where additional information would benefit the record in this case.

Otherwise, except as may be specifically noted elsewhere in this memorandum, the petitions filed appear to be complete and in substantial compliance with Board rules, and the dockets are ready to be set for hearing.

Iowa Code § 478.6 states that a public hearing must be held if an objection is filed or eminent domain is requested. The filing of one ED request in E-21569, six ED requests in E-21648, and nine objections, requires a public hearing be held. Although the two proposed lines have different termini and construction timetables, they are interrelated as parts of a larger project. Therefore, staff recommends the two petitions be consolidated for a single combined hearing.

IOWA CODE § 478.6 further states that when a hearing is required, if the proposed line is more than a mile long the hearing must be held in the county seat of the county at the midpoint of the proposed line. The lines in both dockets exceed a mile in length and are located entirely in Polk County; therefore the hearing must be held in Des Moines.

II. Description of Project

The project currently before the Board consists of 9.70 miles of 161,000 volt electric transmission line south and east of Ankeny, with additional line proposed for construction within the city limits of Ankeny that is not subject to franchise.

The line proposed in Docket No. E-21569 would consist of 4.17 miles of existing electric line right of way running generally east-west, and 0.48 miles⁴ on new right-of-way running north/south. The existing route contains steel lattice tower support structures constructed in or about 1968, and built to carry two electric transmission circuits. However, only one circuit, 345 kV, was installed. The structures stand ready for a second set of conductors to be installed with no additional structures or alteration of existing structures required. As described in Petition Exhibit C, these structures typically stand 129 feet tall and with an average spacing of 870 feet, and would carry the conductors on suspension insulators at the end of horizontal lattice support arms. The portion on new north-south right-of-way, 0.48 miles, would be single pole wooden structures with horizontal post insulators. The poles would range in installed height from 47.5 to 79 feet, with an average spacing of 325 feet. No distribution underbuild is proposed.

The entire 5.05 line proposed in Docket No. E-21648 would be on new right-of-way. As described in Petition Exhibit C, it would consist of single pole wooden structures with horizontal post insulators; essentially the same design as on the new route in Docket No. E-21569. However, because portions of this line would carry 7.62 or 13.2 kV distribution underbuild, the poles would be taller, with an installed height of 61 to 103 feet, and with an average spacing of 300 feet.

Under Iowa Code § 478.4, to grant a franchise the Board “*shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.*”

The nature and purpose of proposed electric transmission lines is described in Petition Exhibit D. The exhibits generally state that the Ankeny area is presently served by three 69 kV lines, and loss of any one of the three could result in unacceptably high current flows in the remaining lines under peak or off-peak conditions. The three phases of the total project would create a 161 kV loop around the south and east sides of Ankeny, feeding one existing and one new substation, to provide additional capacity to maintain line flows at acceptable levels and increase reliability in the area.

There are several other 69, 161, and 345 kV lines in the general area south and east of Ankeny. The existing right-of-way route south of Ankeny is parallel and adjacent to a 161 and 69 kV double circuit line. MidAmerican states that the necessary service could not be obtained from these lines.

Upon review of the project information, there are several areas which MidAmerican should address, or address in more detail, in its prefiled testimony or at hearing, in order to create a more complete record upon which a Board decision can be based.

⁴ In the initial filing MidAmerican showed this part of the project as 0.98 miles long, but annexation subsequently placed one half mile of this line portion inside of the city limits.

1. The need for the project is briefly summarized in Petition Exhibits D. MidAmerican should explain in more detail how the need for a project was determined and why these particular projects were selected. The explanation should include why the new 161 kV line (Docket No. E-21594) and substation northeast of Ankeny were not sufficient to address power supply concerns.
2. MidAmerican should explain in more detail why the additional supply desired could not be provided by one of the other existing electric transmission lines in the area.
3. The justification for the proposed project is described in terms of local benefits to the Ankeny area. But the presence of the line could affect power flows on a wider, or even a regional basis. MidAmerican should explain what impact this line may have over a wider area, including the nature of any discussions with or approvals from regional transmission organizations such as the Midwest Independent Transmission System Operator (MISO).
4. A portion of the new 161 kV circuit would be supported on existing steel tower structures that are about 36 years old. MidAmerican should provide evidence that these structures remain structurally sound and capable of supporting the weight of an additional circuit.

III. The Route

Iowa Code § 478.18(2) contains these provisions for the routing of electric lines:

A transmission line shall be constructed near and parallel to roads, to the right-of-way of the railways of the state, or along the division lines of the lands, according to the government survey, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.

Docket No. E-21569

The route of this pipeline can be divided into two parts; the 4.17 mile long part that lies on existing electric line right-of-way and 0.48 miles on new right-of-way. The route is entirely on private property (excepting road crossings).

The legal description (Petition Exhibit A) of the 0.48 mile segment indicates it is near and parallel to a half-section line, and so is consistent with Iowa Code § 478.18. Petition Exhibit D also states that this route segment parallels an abandoned railroad right-of-way. This route was selected over an active railroad right-of-way further west, which MidAmerican states has a right-of-way too narrow to be used for this project.

The former railroad right-of-way is overgrown with trees and brush. For much of its length the 0.48 mile segment is adjacent to a large Firestone plant building. Other adjacent areas are farmed.

The north end of this segment is at the city limits of Ankeny. From this point the line continues north for half a mile to the south side of the Carney Marsh, then proceeds northerly along the east side of the Carney Marsh for about half a mile, then proceeds on northerly for about another two miles to the Ankeny Substation, all the while remaining within the corporate limits. (Had the active railroad route been followed, the line would have run parallel and near to the west side of the marsh.)

Land use under the 4.17 miles of existing 345 kV line, and an adjacent and parallel 161/69 kV line, is principally farmland or grass and brush with adjacent areas farmed. Although there is development near the route as it nears Ankeny, there are no residences or other buildings in close proximity to this route.

The existing route includes 2.87 miles located approximately 600 feet south of and parallel to section lines, 0.57 miles located approximately 120 feet south of and parallel to section lines, and 0.22 miles which appears approximately parallel to and 110 feet north of a section line. The balance is diagonal segments as the route shifts. Staff is unaware of any legal precedent addressing how far away a route can be from a division line of land and still be "near". From the distances involved, and the diagonal sections, it does not appear this routing can be found consistent with Iowa Code § 478.18.⁵

However, that does not mean the Board cannot find a route of this nature is reasonable. In Petition Exhibit D, MidAmerican states it examined other routes, including routes near and parallel to roads, railway right-of-way, and division lines of land, but found the advantages of an existing route utilizing existing structures overwhelming. Route planning that begins with examining routes meeting Iowa Code 478.18(2) criteria is consistent with 199 IAC 11.1(7) and court precedent. See Anstey v. Iowa State Commerce Commission, 292 N.W. 2d 380 (Iowa 1980). The Board has in the past found it reasonable to utilize an existing route that did not follow division lines of land based primarily on findings that interference with land use would be minimized.⁶ In addition, the routing of the existing line was approved by the Board in original Docket No. E-15215. The "Decision and Order Granting A Franchise" issued in that docket on January 9, 1968, shows that the Board heard testimony on alternative routes but accepted the route proposed, although without specific reference to Iowa Code § 478.18.

⁵ In Petition Exhibit D MidAmerican states that a portion of this route is located along a land division line. The location of this portion is not given. As noted above, staff is hesitant to conclude that the distances of this route from section lines can be considered "near."

⁶ "Decision and Order Granting Franchise" in Dockets No. E-21043, E-21044, E-21045, issued to MidWest Power on March 9, 1993. See also Gorsche v. Midwest Power, 529 N.W.2d 291 (Iowa 1995).

The proposed routing on an existing route and structures appears to offer minimum interference with other public or private land use. Any other routing would encumber other properties with no apparent advantage to the properties crossed by the existing route. Staff believes this routing for the new 161 kV circuit is reasonable.

Iowa Code § 478.18(2) states that its routing criteria must be followed where “practicable and reasonable.” While MidAmerican explains its route selection in Petition Exhibit D, it does not specifically address the issue in terms of the language of the law; i.e., why routes that follow roads, railroads, or division lines of land would not be “practicable and reasonable.” *MidAmerican should address the “practicable and reasonable” issue in prefiled testimony or at hearing.*

Docket No. E-21648

The route proposed in this docket is entirely on private property (excepting road crossings) parallel and adjacent to roads, and the roads are all located on section lines. This routing is consistent with the routing preferences expressed in Iowa Code § 478.18.

The route is almost entirely on level to gently rolling agricultural land; mostly row cropped to the edge of the road right of way, with occasional pasture. There is some timber at the east end of the route. At the east end of the route there are residences across the road from the proposed line location. There is only one residence on the same side of the road as the route; the home is not far from the road, but the property is not an eminent domain parcel so MidAmerican apparently came to terms with this landowner.

The route is indirect, taking 5.05 miles to traverse what would be about 3 miles by a direct route. In Exhibit D MidAmerican explains that two potential routes were presented at the informational meeting, but on the shorter route - one mile shorter - were unable to obtain a voluntary easement on a property where they could not use eminent domain because of a building within 100 feet. See Iowa Code § 478.20 (2003).

An even shorter route - two miles shorter - would have followed NE 29th Street from NE 86th Ave. to NE 94th Ave. for one mile, then straight north across an area without roads for one mile, rejoining the proposed route at NE 102nd Ave. Staff anticipates that this route was rejected due to a subdivision, and several rural residences very close to the road, but staff cannot speak for MidAmerican. *MidAmerican should address the reasons for not following a shorter route along NE 29th Street in prefiled testimony or at hearing.*

The poles would typically be placed 36 feet from the road centerline, on private property three feet beyond the edge of road right-of-way. The conductors carried on these poles would overhang both public and private right-of-way. Exhibit E identifies one area with a wider than usual road right-of-way, in which case the poles would be in road right-of-way but at the same distance from the road.

IV. Objections Filed

Following the Informational Meeting on January 8, 2002, nine person filed objections to the project. All opposed the placement of electric lines near the Carney Marsh. They oppose the disturbance of a natural area by the construction and presence of a large electric line. Several specifically contend that the lines would pose a hazard to waterfowl. Several suggest moving the route to Delaware Avenue, approximately half a mile to the east. None of the objectors contend the line is unnecessary, or state they own property on the route – the marsh area is their concern.

The Carney Marsh is a publicly owned natural area within the city limits of Ankeny. In the project as originally proposed, the line entered the city limits near the southeast corner of the marsh. Due to a recent annexation, the route now enters the city limits half a mile south of the marsh. The Board does not have franchise or routing authority over lines within city limits. Iowa Code § 478.1(1) (2003). It therefore appears the Board does not have authority over the location of the line in the vicinity of the Carney Marsh.

One of the objectors, Mr. Gary Nelson, indicated that there are measures that could reduce the risk to birds, although no specifics were offered. MidAmerican should be encouraged to explore such measures. But because the line is inside of city limits, it unclear what authority the Board would have to compel such action.

In accordance with Iowa Code § 478.6, notice of the hearing in these dockets will be sent by regular mail to the objectors, who will have the opportunity if they choose to offer legal argument on the Board's authority in these matters.

None of the eminent domain parcel owners have filed objections to date.

V. Eminent Domain Requests

Iowa Code § 478.15 gives the Board the authority to grant the right of eminent domain "to such extent as the utilities board may approve, prescribe and find to be necessary to serve a public use."

Docket No. E-21569

In Docket No. E-21569 MidAmerican requests the right of eminent domain over one parcel of land, designated as Parcel 77-01A.⁷ There is an existing 345 kV electric transmission line, and an existing electric line easement⁸, on this property. Land use is

⁷ In 1968 the owners of the parcel were listed as Charles John Jesser, Joe Jesser, David Jesser and Neta Jesser. In 2004 the owner's names are given as Joseph Jesser, David Jesser and Neta Jesser, and Beulah Leavell. It appears from the names that this parcel has remained in the same family.

⁸ The "easement" in this case is the "Report of Condemnation Commission" issued March 16, 1968.

grassed under the electric line with adjacent areas farmed. The easement is 112.5 feet wide, 1500 feet long⁹, and was obtained through condemnation in 1968. As previously discussed, the towers on this route were built to accommodate a second transmission circuit, but the existing condemnation easement covers only the existing 345 kV circuit, and made no provision for the addition of a second circuit at a later date. MidAmerican now requests the right of eminent domain to obtain the additional rights needed for placement of the second circuit. The circuit would be added onto existing tower structures within the confines of the existing easement, which MidAmerican states is of adequate width. The easement lies along the south border of this property with the electric towers located approximately 66.25 feet from the south property line. The electric line is not near or parallel to a road at this location.

The proposed easement is more explicit than the existing condemnation easement. The available condemnation documentation allows the construction, operation and maintenance of a 345,000 volt transmission line, but contains no explicit provisions regarding permitted activities or restrictions on land use.¹⁰ The proposed easement would be more specific regarding the activities MidAmerican would be permitted to engage in on the easement, and would prohibit building, flammable materials accumulation or burning, or changes in ground elevation without MidAmerican's consent. The terms of the proposed easement do not appear unreasonable or unnecessary, but include rights and use restrictions not contained in the existing condemnation easement.

Iowa Code §§ 478.15 and .20 place certain limitations on the application of eminent domain. Available information does not show any of those limitations apply to this parcel.

Docket No. E-21648

In Docket No. E-21648 MidAmerican requests the right of eminent domain over six parcels of land, designated as Parcels 77-20, 77-21, 77-33A, 77-35A, 77-37, and 77-38. All are agricultural properties with no buildings or residences on the same side of the road as the proposed new transmission line route. Parcel 77-20 includes some timber.

The entire route of the line in this docket is on private property parallel and adjacent to streets and roads. The proposed easement is typically 58 feet wide measured from the center of the road, and includes 33 feet of road right-of-way and 25 feet of private property easement. The electric line poles would be located 36 feet from the centerline of the road, or three feet outside of the road right-of-way line and 22 feet from the outer private property boundary of the easement. While the poles would be on private property, conductors on the road side of the line would overhang the public road right-of-

⁹ According to the current Exhibit E. A 1968 Notice of Appeal to district court of the condemnation commission award says the linear length is approximately 1502 feet.

¹⁰ The rights granted in the "Report of Condemnation Commission" are somewhat different and less specific than those granted by the Board in its January 9, 1968 "Decision and Order Granting A Franchise" in Docket E-15215.

way (the line insulators would project 5.5 feet from the pole). It is staff's understanding that MidAmerican seeks eminent domain authority that includes public road right-of-way to insure they can address any remaining private property rights not extinguished by the road easement.

There are two exceptions to the above description of a typical easement. On Parcel 77-33A, the road right-of-way easement is 100 feet wide, rather than the usual 33 feet, for 1046.74 feet. This means the entire easement MidAmerican seeks would be within the road right-of-way for this length. On Parcel 77-37, where MidAmerican seeks an easement in the corner of the property for one corner pole, the easement dimensions would be 58 feet by 61 feet. It is unclear why MidAmerican seeks 61 feet instead of the 58 that is sufficient elsewhere.

On March 29, 2004, the Governor signed Senate File 2118, a bill which will apparently make it easier for utilities to place facilities in public road right-of-way. The bill was effective upon enactment. It is unclear what impact this new law may have on the need for MidAmerican to obtain the right of eminent domain for property subject to a road right-of-way easement – will it still be “necessary.”

The rights MidAmerican seeks through condemnation would be for “electric transmission lines” of unspecified voltage. This would apparently give MidAmerican the right to install an additional or higher voltage electric line in the future. When the Board grants eminent domain authority, it is customary for that grant to be specific to, and limited to, the project before the Board. In this case MidAmerican appears to be seeking broader rights. MidAmerican's filing also shows it proposes to install 7620 and 13,200 volt distribution circuits beneath the transmission circuit, on the same poles, on portions of this route. By specifying “transmission” in its eminent domain request, it appears MidAmerican would not obtain the rights to install the distribution underbuild circuits.

In other respects the rights MidAmerican seeks do not appear unreasonable or unnecessary. Nor does available information show any of the Iowa Code §§ 478.15 and .20 limitations apply to these parcels.

It appears at least arguable that, under Iowa Code §§ 478.15 and 6B.2B, for eminent domain to be “necessary” a party seeking eminent domain must have made a good faith effort to obtain voluntary easements. *MidAmerican should address this consideration in prefiled testimony or at hearing.*

Staff also suggests that MidAmerican address the following issues from Docket No. E-21648 in its prefiled testimony or at hearing:

1. The rationale for and reason a right-of-way width of 58 feet, including 25 feet of new easement of private property, was selected.
2. Why is MidAmerican seeking an easement width of 61 feet on Parcel 77-37.

3. Why should the Board grant the right of eminent domain for transmission "lines" of unspecified voltage, rather than only the specific rights needed for this project.
4. How does MidAmerican proposed to place distribution underbuild circuits on portions of the route if the right to install such lines is not part of its eminent domain request?
5. MidAmerican should explain the rationale for seeking the right of eminent domain where a road easement already exists, including the impact of the recently enacted Senate File 2118.

IOWA CODE section 478.6 and 199 IAC 11.5(3) require the Board to prescribe the form of written notice to be served upon owners or occupants of eminent domain parcels. MidAmerican filed copies of proposed notice letters on April 1, 2004. The letters appear acceptable

VI. Conclusion

IOWA CODE section 478.6 states that a public hearing must be held if an objection is filed or eminent domain is requested. The filing of one ED request in E-21569, six ED requests in E-21648, and nine objections, requires a public hearing be held.

Board staff finds the petitions in these dockets to be sufficiently in order to be set for hearing.

The two dockets propose construction of electric transmission lines that are interrelated as parts of a larger project. It is recommended these dockets be consolidated for hearing.

IOWA CODE § 478.6 states that when a hearing is required, if the proposed line is more than a mile long the hearing must be held in the county seat of the county at the midpoint of the proposed line. The lines in both dockets exceed a mile in length and are located entirely in Polk County; therefore the hearing must be held in Des Moines.

IOWA CODE section 478.6 and 199 IAC 11.5(3) require the Board to prescribe the form of written notice to be served upon the owners or occupants of eminent domain parcels. Letters that appear acceptable have been filed. A decision on acceptance will be required from the Board, or from a Presiding Officer if the dockets are so assigned.

This report identifies a number of areas that staff recommends MidAmerican be instructed to address in prefiled testimony or at hearing to improve the record on which a decision will be based.